IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6330 Of 2004

Munnar L. Yadav .. Petitioner

versus

Shivlagan R. Giri .. Respondent

...

Mr.P.S. Dani for the petitioner.

Mr.B.N. Rai for the respondents.

CORAM : D.G. KARNIK, J

DATED : 3rd September 2004.

P.C:-

1. Heard the learned counsel for the parties.

2. Learned counsel for the petitioner states that the description of the property as is required to be given under Order 7 Rule 3 of the Code of Civil Procedure has not been given in the plaint. According

to him, the suit property consists of a land and building. The suit land forms a part of a larger piece of land. Neither the dimensions of the suit land and property nor its boundaries are mentioned in the plaint. In the circumstances, submits the learned counsel, the suit would to fail on technical grounds and Writ Petition would also consequently fail. In view of this, the learned counsel for the petitioner seeks leave to withdraw the suit itself with liberty to file a fresh suit.

3. Learned counsel for the respondent states that the suit has not been dismissed on the ground of improper/insufficient description but on the ground of res-judicata. The learned counsel for the petitioner states that even if the petitioner satisfied this Court that the principle of res judicata was wrongly applied still his suit would fail because of a technical defect and therefore, the petitioner should be permitted to withdraw the suit.

4. I have perused the plaint, copy of which was handed over to me by the learned counsel for the respondent. Proper description of the property has not been given and therefore, the suit eventually would fail on that ground.

5. Hence, petitioner is permitted to withdraw the suit with liberty to file fresh suit.

6. In view of the withdrawal of the suit, Writ Petition does not survive and is disposed of.

Authenticated copy allowed.

D.G. KARNIK, J